

§ 20.2053-7

Example 1. Increase in tax due. After the decedent's death, the Internal Revenue Service examines the gift tax return filed by the decedent in the year before the decedent's death and asserts a deficiency of \$100x. The estate pays attorney's fees of \$30x in a non-frivolous defense against the increased deficiency. The final determination of the deficiency, in the amount of \$90x, is paid by the estate prior to the expiration of the limitation period for filing a claim for refund. The estate may deduct \$90x under section 2053(a)(3) and \$30x under § 20.2053-3(c)(2) or (d)(3) in connection with a timely claim for refund.

Example 2. Refund of taxes paid. Decedent's estate timely files D's individual income tax return for the year in which the decedent died. The estate timely pays the entire amount of the tax due, \$50x, as shown on that return. The entire \$50x was attributable to income received prior to the decedent's death. Decedent's estate subsequently discovers an error on the income tax return and timely files a claim for refund of income tax. Decedent's estate receives a refund of \$10x. The estate is allowed a deduction of only \$40x under section 2053(a)(3) for the income tax liability accrued prior to the decedent's death. If D's estate had claimed a deduction of \$50x on D's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), the deduction claimed under section 2053(a)(3) will be allowed only to the extent of \$40x upon examination by the Commissioner.

(h) *Effective/applicability date.* This section applies to the estates of decedents dying on or after October 20, 2009.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended at T.D. 9468, 74 FR 53664, Oct. 20, 2009]

§ 20.2053-7 Deduction for unpaid mortgages.

A deduction is allowed from a decedent's gross estate of the full unpaid amount of a mortgage upon, or of any other indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon to the date of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is included in the value of the gross estate. If the decedent's estate is liable for the amount of the mortgage or indebtedness, the full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a de-

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duction. But if the decedent's estate is not so liable, only the value of the equity of redemption (or the value of the property, less the mortgage or indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043-1. Only interest accrued to the date of the decedent's death is allowable even though the alternate valuation method under section 2032 is selected. In any case where real property situated outside the United States no deduction may be taken of any mortgage thereon or any other indebtedness does not form a part of the gross estate, in respect thereof.

[T.D. 6684, 28 FR 11409, Oct. 24, 1963]

§ 20.2053-8 Deduction for expenses in administering property not subject to claims.

(a) Expenses incurred in administering property included in a decedent's gross estate but not subject to claims fall within the second category of deductions set forth in § 20.2053-1, and may be allowed as deductions if they—

(1) Would be allowed as deductions in the first category if the property being administered were subject to claims; and

(2) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

Usually, these expenses are incurred in connection with the administration of a trust established by a decedent during his lifetime. They may also be incurred in connection with the collection of other assets or the transfer or clearance of title to other property included in a decedent's gross estate for estate tax purposes but not included in his probate estate.

(b) These expenses may be allowed as deductions only to the extent that they would be allowed as deductions under the first category if the property were subject to claims. See § 20.2053-3. The